

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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| EMBLEMHEALTH, INC. |) | |
| HEALTH INSURANCE PLAN OF |) | |
| GREATER NEW YORK, INC. ET AL, |) | |
| |) | Case No. 19-1164 |
| Plaintiff, |) | |
| |) | Judge Campbell-Smith |
| v. |) | |
| |) | |
| THE UNITED STATES, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

JOINT STATUS REPORT

Pursuant to the Court’s January 9, 2023 order (ECF No. 23), the parties respectfully submit this Joint Status Report.

This case is currently stayed because the Government is working with a number of cost-sharing reduction (CSR) plaintiffs to determine whether they may efficiently resolve this matter without further litigation or at least streamline these cases.

As the parties reported previously, counsel for a large number of plaintiff health plans shared a proposal with the Government on December 3, 2021. On April 28, 2022, the Government provided its substantive response to the other CSR Plaintiffs’ proposed settlement methodology for CSR damages owed for benefit years 2018 and beyond. Those CSR Plaintiffs have since reviewed the Government’s response, and the parties have met and exchanged additional information in furtherance of settlement negotiations for CSR claims for benefit years 2018 and beyond. In July, the Government produced information to those CSR plaintiffs regarding the calculation of second-lowest cost silver plans in 35 states and the District of Columbia, based upon publicly available data. Those parties subsequently participated in a settlement-related call on Thursday, September 1, 2022, and the other CSR Plaintiffs followed

that call with a letter to the Government on September 15, 2022. The Government responded to CSR Plaintiffs by letter dated November 10, 2022, and the other CSR Plaintiffs' offered a counter-proposal via letter on January 10, 2023. The parties participated in settlement conference calls on Thursday, January 19, 2023, and Friday, February 24, 2023 to discuss the latest settlement proposal. The Government also participated in an additional settlement related call with other issuer-plaintiffs on March 13, 2023.

Thus, as described above, the settlement negotiation process is ongoing. Plaintiffs in this case have expressed a willingness to consider seriously the method, if any, that the Government is able to agree to with the other CSR plaintiffs for resolving or streamlining the CSR cases. The complexity of the CSR cases and the number of interested stakeholders necessitate that the parties be afforded additional time to pursue this mutual attempt to resolve the damages issues in this case without further litigation. Good cause therefore exists to continue the stay in this case for CSRs due to Plaintiffs for benefit years 2018 and beyond.

As previously directed by the Court, the parties will file another Joint Status Report in sixty days in order to update the Court on the status of their efforts to fully resolve this matter.

Respectfully submitted,

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March 14, 2023

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